

E-FILED - 11/10/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ANGELO LENA,)	No. C 09-2085 RMW (PR)
)	
Petitioner,)	ORDER DENYING REQUEST
)	FOR CERTIFICATE OF
v.)	APPEALABILITY; DENYING
)	MOTION TO PROCEED IN
SUPREME COURT OF CALIFORNIA, et)	FORMA PAUPERIS WITHOUT
al.,)	PREJUDICE
)	
Respondents.)	(Docket No. 35)

Petitioner, a Canadian prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 alleging violations of his due process rights, among other things. On August 25, 2009, the court dismissed this action on abstention grounds, acknowledging that petitioner is incarcerated in Canada and raises claims arising from a pending criminal case in Marin County, California. Petitioner filed a timely notice of appeal.

Upon the filing of a notice of appeal and a request for a certificate of appealability (COA), the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)).

Although petitioner did not file a separate request for a certificate of appealability ("COA"), the Order Denying Request for Certificate of Appealability; Denying Motion to Proceed In Forma Pauperis Without Prejudice

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1 court construes his notice of appeal as such. See Asrar, 116 F.3d at 1270.

2 The court concludes that petitioner has not shown “that jurists of reason would find it
3 debatable whether the petition states a valid claim of the denial of a constitutional right and that
4 jurists of reason would find it debatable whether the district court was correct in its procedural
5 ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, petitioner’s request for a
6 certificate of appealability is DENIED.

7 In view of the denial of the COA, petitioner’s motion to proceed in forma pauperis on
8 appeal will be denied without prejudice to renewing the motion in the Court of Appeal if it
9 grants a COA.

10 The clerk shall serve notice of this order forthwith to the United States Court of Appeal
11 and to the parties. See Fed. R. App. P. 24(a).

12 IT IS SO ORDERED.

13 DATED: 11/6/09


RONALD M. WHYTE
United States District Judge